

The Honorable David G. Estudillo

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

HACENE DJEMIL, FATIHA DJEMIL,
RANIA DJEMIL, and A.D., a minor, by
and through his Guardian Ad Litem
Fatiha Djemil,

Plaintiffs,

v.

TESLA, INC., a Delaware corporation;
and DOES 1 through 50, inclusive,

Defendant.

CASE NO. 3:21-cv-05251-DGE

**STIPULATED PROTECTIVE
ORDER**

NOTE ON MOTION CALENDAR:
JANUARY 11, 2023

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material may include (1) documents related to design, testing, manufacturing, marketing, and/or performance of Tesla vehicles; (2) trade secrets and other commercially sensitive information; (3) confidential business or financial information; (4) non-public, proprietary, commercially sensitive-information; and (5) personal and private information regarding any person (including current and former street addresses for natural persons, Social Security numbers, telephone numbers, email addresses, dates of birth, driver’s license numbers, account numbers, maiden names, and passwords). In the event either party produces documents designated as Confidential that the other believes do not fall within one of the above categories, the parties will meet and confer to confirm the propriety of the designation or the necessity of proposing an amendment to this Protective Order.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential material may be disclosed only to the categories of persons and under the conditions described in this agreement. Confidential material must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this agreement.

1 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
 2 by the court or permitted in writing by the designating party, a receiving party may disclose any
 3 confidential material only to:

4 (a) the receiving party’s counsel of record in this action, as well as employees
 5 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

6 (b) the officers, directors, and employees (including in-house counsel) of the
 7 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
 8 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
 9 designated;

10 (c) experts and consultants retained by counsel of record in connection with
 11 this lawsuit, to whom disclosure is reasonably necessary for the expert or consultant to prepare to
 12 testify, or to assist counsel of record in the prosecution or defense of this lawsuit, provided,
 13 however, that: (i) the disclosure shall be made only to an individual expert, or to members, partners,
 14 employees or agents of an expert consulting firm as the expert consulting firm shall designate as
 15 the persons who will undertake the engagement on behalf of the expert consulting firm (the
 16 “Designated Expert Personnel”); (ii) the individual expert or Designated Expert Personnel use the
 17 information solely in connection with this lawsuit; and (iii) the individual and/or a representative
 18 of each expert consulting firm sign the “Acknowledgment and Agreement to Be Bound” (Exhibit
 19 A) on behalf of any Designated Expert Personnel associated with that firm; and (iii) neither the
 20 individual expert or consultant or any employee of the expert consulting firm are a current owner,
 21 director, employee or consultant of any entity that competes with Tesla.

22 (d) the court, court personnel, and court reporters and their staff;

23 (e) during their depositions, witnesses in the action to whom disclosure is
 24 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
 25 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
 26 transcribed deposition testimony or exhibits to depositions that reveal confidential material must

1 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
 2 under this agreement;

3 (f) the author or recipient of a document containing the information or a
 4 custodian.

5 4.3 Filing Confidential Material. Before filing confidential material or discussing or
 6 referencing such material in court filings, the filing party shall confer with the designating party,
 7 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
 8 remove the confidential designation, whether the document can be redacted, or whether a motion
 9 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
 10 designating party must identify the basis for sealing the specific confidential information at issue,
 11 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
 12 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
 13 the standards that will be applied when a party seeks permission from the court to file material
 14 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
 15 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
 16 Failure to satisfy this requirement may result in the motion to seal being denied, in accordance
 17 with the strong presumption of public access to the Court's files.

18 4.4 Storage and Transmission of Protected Material. Any person in possession of
 19 another Party's protected material shall exercise the same care with regard to the storage, custody,
 20 or use of the information as they would apply to their own material of the same or comparable
 21 sensitivity and, at a minimum must take reasonable precautions to protect information and material
 22 from loss or misuse, including but not limited to:

23 Protected information in electronic format shall be maintained in a secure litigation support
 24 site(s) that applies standard industry practices regarding data security, including but not limited to
 25 application of access control rights to those persons authorized to access Covered Information
 26 under this Order;

1 An audit trail of use and access to litigation support site(s) shall be maintained while the
2 litigation, including any appeals, is pending;

3 Any protected information downloaded from the litigation support site(s) in electronic
4 format shall be stored only on device(s) (e.g., laptop, tablet, smartphone, thumb drive, portable
5 hard drive) that are password protected and/or encrypted with access limited to persons entitled to
6 access protected information under this Order. If the user is unable to password protect and/or
7 encrypt the device, then the Covered Information shall be password protected and/or encrypted at
8 the file level;

9 Protected information in paper format is to be maintained in a secure location with access
10 limited to persons entitled to access protected information under this Order, but nothing within this
11 provision requires such persons to maintain such protected information in an individually locked
12 office;

13 Summaries of protected information, including any lists, memoranda, indices, or
14 compilations prepared or based on an examination of protected information, that quote from or
15 paraphrase Covered Information in a manner that enables it to be identified shall be accorded the
16 same status of confidentiality as the underlying Covered Information;

17 Protected information that is electronically transmitted must be transmitted in either an
18 encrypted form (with the encryption key separately provided) or via a secure file transfer platform.
19 Protected material may not be transmitted by electronic mail as unencrypted file attachments and
20 such material may not be displayed or transmitted over any unsecured online meeting platform or
21 service.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
24 or non-party that designates information or items for protection under this agreement must take
25 care to limit any such designation to specific material that qualifies under the appropriate
26 standards. The designating party must designate for protection only those parts of material,

documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (*see, e.g.*, section 5.2(b) below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form: (*e.g.*, paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that contains confidential material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within thirty (30) days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. All depositions shall be treated as though designated as protected

1 in their entirety up until such time as portions of the deposition testimony are designated as
 2 protected information. If a party or non-party desires to protect confidential information at trial,
 3 the issue should be addressed during the pre-trial conference.

4 (c) Other tangible items: the producing party must affix in a prominent place
 5 on the exterior of the container or containers in which the information or item is stored the word
 6 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
 7 the producing party, to the extent practicable, shall identify the protected portion(s).

8 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 9 designate qualified information or items does not, standing alone, waive the designating party’s
 10 right to secure protection under this agreement for such material. Upon timely correction of a
 11 designation, the receiving party must make reasonable efforts to ensure that the material is treated
 12 in accordance with the provisions of this agreement.

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
 15 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
 16 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 17 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
 18 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 19 original designation is disclosed.

20 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
 21 regarding confidential designations without court involvement. Any motion regarding confidential
 22 designations or for a protective order must include a certification, in the motion or in a declaration
 23 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
 24 affected parties in an effort to resolve the dispute without court action. The certification must list
 25 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
 26 to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties), may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement,

and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof, and shall delete and destroy all electronic copies. Alternatively, the parties may agree upon appropriate methods of destruction.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: January 11, 2023

/s/ David C. Wright
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DATED: January 11, 2023

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8 ***Attorneys for Defendant Tesla, Inc.***

9 PURSUANT TO STIPULATION, IT IS SO ORDERED.

10 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
11 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
12 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
13 documents, including the attorney-client privilege, attorney work-product protection, or any other
14 privilege or protection recognized by law.

15 DATED: January 13th, 2023

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17 David G. Estudillo
18 United States District Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on [date] in the
case of _____ *Djemil v. Tesla, Inc.*, No. 3:21-cv-05251-DGE. I agree to comply with
and to be bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment in the nature
of contempt. I solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any person or entity except in strict compliance
with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____